

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 175

GENERAL EXCISE TAX EXEMPTIONS

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Historical Note: Chapter 15-175, Hawaii
Administrative Rules, is substantially based upon
chapter 6-377, Hawaii Administrative Rules. [Eff
2/8/93; am 6/8/98; R **OCT 25 1999**]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-175-1 Purpose. This chapter implements sections 201G-116 and 237-29, HRS, regarding general excise tax exemptions for qualified persons and firms involved in providing low and moderate income housing. The legislative intent of the general excise tax exemption is to achieve cost savings to assure economic feasibility which will encourage and enable the production of as many lower cost housing units as possible. [Eff. **OCT 25 1999**] (Auth: HRS §237-29) (Imp: HRS §§237-29, 201G-116)

§15-175-2 Definitions. As used in this chapter: "Allowable construction costs" means expenses incurred by a licensed contractor, for labor and materials which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such a form to be perceptible to the senses.

"Claimant" means a person or firm filing a claim with the corporation for general excise tax exemptions allowed under section 237-29, HRS.

"Corporation" means the housing and community development corporation of Hawaii.

"Eligible housing project" means a housing project which meets both income and development criteria as follows:

- (1) Income criteria:
 - (A) At least twenty per cent of the units in the project are rented or sold to households with incomes of up to fifty per cent of the area median income as determined by the United States Department of Housing and Urban Development;
 - (B) At least forty per cent of the units are rented or sold to households with incomes of up to ninety-five per cent of the area median income, as determined by the United States Department of Housing and Urban Development; or

- (C) At least sixty per cent of the units must be rented or sold to households with incomes of up to one hundred forty per cent of the area median income, as determined by the United States Department of Housing and Urban Development; and
- (2) Development criteria:
 - (A) Rental or for-sale housing projects which are provided interim construction financing, or are developed, newly constructed or moderately or substantially rehabilitated (as defined in section 201G-116, HRS) pursuant to the provisions of chapter 201G, HRS;
 - (B) Rental or for-sale housing projects which are developed under a government assistance program approved by the corporation; or
 - (C) Rental or for-sale housing projects developed under the sponsorship of a private nonprofit corporation.

"Government assistance program" means any housing program qualified by the corporation and administered or operated by the State, the corporation, the United States, or any of its political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development for qualified persons in the State. Government assistance program includes, but is not limited to, the United States Department of Agriculture's 502 and 515 programs; the Federal Housing Administration's 235 program; the United States Department of Housing and Urban Development's HOME, HOPE, 202, and 811 programs; the section 802 military housing program; the military construction and family housing program; the low income housing tax credit program; the corporation's rental assistance program; tax exempt or taxable multi-family bond financing programs administered by the corporation or any of the counties; and residential projects developed by the department of Hawaiian home lands.

"Limited distribution mortgagor" means an entity which may consist of a person, partnership, association, or limited liability partnership and company which has executed with the federal, state, or county agency a regulatory agreement as to rents, charges, profits, dividends, development costs, and

methods of operation.

"Lower income households" mean those households earning one hundred forty per cent or less of the area median income as determined by the United States Department of Housing and Urban Development.

"Moderate rehabilitation" means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure.

"Nonprofit corporation" means an entity defined under section 415B-2, HRS.

"Qualified person or entity" means an individual, partnership, joint venture, corporation, association, limited liability partnership and company, business, trust, or any organized group of persons or legal entities, or any combination thereof, which possesses all professional or vocational licenses necessary to do business in the State of Hawaii in conjunction with the planning, design, financing, construction (including materials and supplies), sale, or rental of eligible housing projects.

"SLH" means Session Laws of Hawaii.

"Staff" means the employed personnel of the housing and community development corporation of Hawaii.

"State" means the State of Hawaii.

"Substantial rehabilitation" means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance. Substantial rehabilitation also includes rehabilitation activity that is necessary to correct substandard conditions to make essential improvements, and to repair major systems in danger of failure. The term "major systems" includes, but is not limited to such items as roof structures, ceiling, wall or floor structures, foundations, elevators, and plumbing or electrical repair, replacement, or in some cases, removal. Substantial rehabilitation activities also include energy and other natural resource conservation related repairs and improvements, as well as improvements required to provide access or added safety for the handicapped or elderly and renovation, alteration, or remodeling to convert or adapt

structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for elders). [Eff: **OCT 25 1999**]
(Auth: HRS §237-29) (Imp: HRS §§237-29, 201G-116)

SUBCHAPTER 2

CERTIFICATION OF PERSONS AND ENTITIES

§15-175-11 Types of income eligible for exemption. (a) With respect to for-sale housing projects, one hundred per cent of the gross income received by a qualified person or entity for the planning, design, financing, construction, or sale of an eligible housing project may be exempt from general excise taxes.

(b) Rents received from residential units in a rental project may be exempt from general excise taxes; provided that in an economically integrated housing project in which only a portion of the units in a project are targeted for lower income households, the exemption shall apply to only that portion targeted for lower income households.

(c) Revenues received from commercial, industrial, or other nonresidential uses within a housing project, such as coin operated vending machines, laundromats, parking fees, and the like, shall not be eligible for an exemption from general excise taxes. [Eff: **OCT 25 1999**] (Auth: HRS §237-29) (Imp: HRS §237-29)

§15-175-12 Application for certification of newly constructed or rehabilitated housing projects. When an exemption from general excise taxes is requested by a claimant involved with a newly constructed or rehabilitated housing project, the following shall apply:

- (1) The developer or general contractor of an eligible housing project shall submit to the corporation completed general excise tax exemption claims (form G-37) on behalf of any subcontractors, material houses, real estate sales agencies, or other entities involved with the planning, design, financing,

- construction, or sale of the housing project;
- (2) Along with the claim forms, the developer or general contractor shall submit to the corporation the following information on the eligible housing project:
- (A) A description of the eligible housing project, including the number of housing units affordable to households earning up to fifty per cent, ninety-five per cent, and one hundred forty per cent, respectively, of the area median income, as determined by the U.S. Department of Housing and Urban Development;
 - (B) Authorization for the corporation to conduct on-site inspections of the affordable housing project if the project is not being developed or rehabilitated under the sponsorship of the corporation;
 - (C) A cover letter requesting the tax exemption, and which includes the following:
 - (i) A list of qualified persons or entities or both claiming an exemption; and
 - (ii) Contract amounts for each of the respective qualified persons or entities or both; and
 - (D) Any additional information necessary for the corporation to make a determination. Projects which are developed under chapter 201G, HRS, may be exempted from submitting this information; and
- (3) Upon receipt, staff of the corporation shall time stamp the claim form.
- (A) If the person or entity is found to be eligible under these rules, staff shall issue a certification for exemption to the claimant within ten working days thereafter, and shall forward the originals of the certified claim forms to the department of taxation.
 - (B) If a person or entity is found to be ineligible under these rules, staff shall, within ten working days of receipt, so notify the claimant and the developer or general contractor, along

with the reason or reasons that the claim is ineligible for an exemption.
 [Eff: **OCT 25 1999**] (Auth: HRS §237-29) (Imp: HRS §237-29)

\$15-175-13 Application for certification of rental housing projects. The following requirements shall apply to requests for exemptions from general excise taxes for affordable rents received from affordable housing units in newly constructed or moderately or substantially rehabilitated rental housing projects:

- (1) The claimant shall annually complete and submit to the corporation a general excise tax exemption claim (form G-37);
- (2) Along with the claim form, the claimant shall submit to the corporation the following information on the eligible housing project:
 - (A) A description of the eligible housing project, including the number of housing units affordable to households earning up to fifty per cent, ninety-five per cent, and one hundred forty per cent, respectively, of the area median income, as determined by the United States Department of Housing and Urban Development;
 - (B) A schedule showing rents charged on all housing units, and verification that the lower income household tenants meet the income criteria necessary for the tax exemption; and
 - (C) Any additional information necessary for the corporation to make a determination. Projects which are developed or which receive assistance under chapter 201G, HRS, may be exempted from submitting this information; and
- (3) Upon receipt, staff of the corporation shall time stamp the claim form; and:
 - (A) If the claimant is found to be eligible under these rules, staff shall issue a certification for exemption within ten working days thereafter, and shall forward the original of the certified claim form to the department of

- taxation; or
- (B) If a person or entity is found to be ineligible under these rules, staff shall, within ten working days of receipt, so notify the claimant, along with the reason or reasons that the claim is ineligible for an exemption. [Eff **OCT 25 1999**] (Auth: HRS §237-29) (Imp: HRS §237-29)

§15-175-14 Criteria for determining eligibility of projects. In approving or disapproving a project for exemption from general excise taxes, the corporation shall determine whether:

- (1) The project is an eligible housing project under these rules; and
- (2) The project is consistent with any other requirements under the law or under this chapter. [Eff **OCT 25 1999**] (Auth: HRS §§201G-116, 237-29) (Imp: HRS §§201G-116, 237-29)

SUBCHAPTER 3

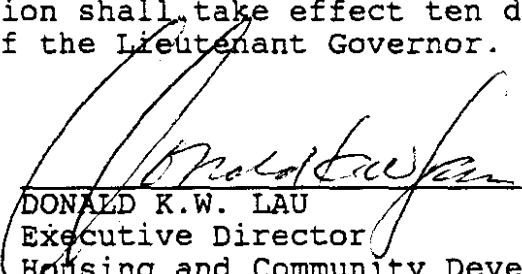
MISCELLANEOUS PROVISIONS

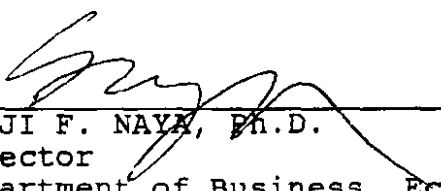
§15-175-21 Exemptions for certain existing rental projects. Any existing rental project for which a general excise tax exemption was granted by the Hawaii housing authority prior to June 9, 1983, is not required to reapply for an exemption unless there is a change in use or ownership of the project which results in a change in the target tenant population. Upon such a change in use or ownership, application for recertification shall be made to the corporation. If qualified, the successive owner of the project may receive an annual exemption as long as the project remains an eligible housing project. [Eff **OCT 25 1999**] (Auth: HRS §237-29) (Imp: HRS §§201G-116, 237-29)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM


The repeal of chapter 6-377 and the adoption of chapter 15-175, Hawaii Administrative Rules, on the Summary Page dated August 27, 1999, was adopted on August 27, 1999, following public hearings held on Maui on July 15, 1999, Hilo on July 16, 1999, Oahu on July 19, 1999, and Kauai on July 20, 1999, after public notice was given in the Midweek newspaper on June 7, 1999.

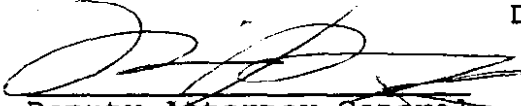
The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.


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Dated:

10-14-99

OCT 15 1999

Filed

LIEUTENANT GOVERNOR'S
OFFICE

'99 OCT 15 P2:09